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# State v. Jenkins Respondent's Brief Dckt. 44486

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44486
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2015-4470
	)	
MITCHELL WILLIAM JENKINS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Jenkins failed to establish that the district court abused its discretion, either by imposing a unified sentence of seven years, with two years fixed, upon his guilty plea to possession of methamphetamine, or by relinquishing jurisdiction?

Jenkins Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Jenkins pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.23-24, 36, 51-55.) Following the period of retained jurisdiction, the

district court relinquished jurisdiction. (R., pp.72-74.) Jenkins filed a timely notice of appeal. (R., pp.75-77.)

Jenkins asserts his sentence is excessive in light of the nature of the offense, his education and employment goals, and his moderate risk to reoffend. (Appellant's brief, pp.4-6.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with two years fixed, which falls well within the statutory guidelines. (R., pp.51-55.) Furthermore, Jenkins' sentence is appropriate in light of his ongoing criminal offending, history of absconding supervision and disregard for the terms of community

supervision, claim that he does not require rehabilitative treatment, continued criminal behavior while this case was pending, and failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions. As a juvenile, Jenkins incurred several charges for minor in possession and was also adjudicated for carrying a concealed weapon; in that case he absconded and remained at large until the case was eventually closed, years later. (PSI, pp.5-6.<sup>1</sup>) In October 2000, Jenkins was twice convicted of minor in possession of alcohol. (PSI, p.6.) In November 2000, he was convicted of burglary in Oregon and was placed on probation. (PSI, p.6.) According to Jenkins' Oregon probation officer, Jenkins absconded in 2001, "was picked up in 2002 and absconded again in May 2002." (PSI, p.9.) Jenkins was "picked up again in February 2012 and released from jail in April 2012. Five (5) days later he absconded again," and, at the time of sentencing for the instant offense, there was still an active warrant in Oregon for the probation violation. (PSI, p.9.) Jenkins was convicted of burglary in Idaho in November 2002 and was placed on probation after completing the retained jurisdiction program. (PSI, pp.6-7.) While he was on probation for the Idaho burglary, he violated his probation twice and committed the new crimes of invalid driver's license, domestic battery (amended from rape), and rape. (PSI, pp.6-7.) Jenkins was sentenced to prison for the rape, and while in prison, he incurred five DOR's, refused to participate in sex offender treatment, and ultimately topped out his sentence in 2009. (PSI, pp.7, 9-10, 65.) Between 2010 and 2014, Jenkins was convicted of petit theft, two counts of invalid driver's license (one of which was amended

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "Jenkins 44528 psi.pdf."

from DWP), permitting animals to go without care, and providing false information. (PSI, pp.7-8.)

In the instant offense, Jenkins drove with an invalid driver's license and no proof of insurance and, upon being stopped for a traffic violation, he lied to officers with respect to his identity "because he did not want to get a ticket." (PSI, pp.76-77.) In Jenkins' vehicle, officers found a baggie containing methamphetamine, three glass methamphetamine pipes, a straw, and 11 small plastic baggies. (PSI, p.85.) Jenkins also had \$777.00 in cash in his front pocket, some of which was counterfeit. (PSI, p.87.) While the instant case was pending, Jenkins committed the new crimes of petit theft in August 2015 and disorderly conduct in September 2015. (PSI, p.9.) He also continued to abuse illegal substances while on pretrial release, admitting, in August 2015, to smoking marijuana and, approximately six weeks later, he again violated the conditions of his release by having a "dirty" UA. (R., pp.35-36, 40.) In October 2015, Jenkins told the presentence investigator that he had used both marijuana and methamphetamine in September 2015, just before his pretrial release was revoked. (PSI, p.14; R., p.40.)

During his substance abuse evaluation, Jenkins advised that he first used illegal substances at age 13, and reported using alcohol, cannabis, cocaine, inhalants, opioids, hallucinogens, sedatives, hypnotics, anxiolytics, amphetamines, and spice. (PSI, p.59.) He admitted that he had last used marijuana two days before his evaluation and that he "consumes an 1/8 of marijuana every two days." (PSI, p.57.) Jenkins also reported that he "has not stopped using substances and is 0% ready to quit," and told the evaluator, "I don't have a problem with marijuana, I will continue to use marijuana. I will stop

smoking for court and legal, once I'm off supervision I will go back to smoking.” (PSI, p.57.) Despite his ongoing substance abuse and the resulting criminal charges, Jenkins stated that he “did not think substance abuse treatment was needed.” (PSI, p.59.)

The substance abuse evaluator reported:

Over the past 12 months, [Jenkins] endorsed engaging in the following behaviors related to Conduct Disorder two or more times: bullying or threatening other people; starting fights with other people; being physically cruel to other people; taking money or things from a house, building, or car; lying or conning to get desired things or to avoid having to do something; taking things from a store or writing bad checks to buy things....

(PSI, p.60.) Jenkins also acknowledged that, “during a disagreement in the past 12 months,” he engaged in “insulting, swearing, or cursing at someone; kicking, biting, or hitting someone; [and] beating up someone.” (PSI, p.60.) Jenkins further “reported last swearing, cursing, threatening someone, throwing something, or pushing or hitting someone in any way during an argument within the past two days and that this behavior occurred on 90 out of the past 90 days. ... He stated he last engaged in any behavior that might result in getting into trouble or be against the law (besides using alcohol or other drugs) within the past two days.” (PSI, p.60 (parenthetical notation original).)

The presentence investigator aptly concluded, “Jenkins seems rather lackadaisical about living a prosocial life. After he bonded out of jail he continued to participate in criminal activity,” and, “I question whether Mr. Jenkins is a viable candidate for probation at this time. I feel that participating in a period of Retained Jurisdiction could provide him an opportunity to show the Court he is serious about making serious changes in his life while he participates in treatment. (PSI, p.19.) At sentencing, the state likewise recommended the retained jurisdiction program; however,

it noted that Jenkins would need to “do, you know, a very, very good Rider ... given his criminal history and his stated desire to continue using drugs upon his release, the State is really going to need to be impressed by a major shift in his attitude on the Rider to be able to consider recommending probation in this case.” (10/23/15 Tr., p.9, Ls.5-14.)

The district court considered all of the relevant information and imposed an appropriate sentence. Jenkins’ sentence is reasonable in light of his ongoing criminal offending, history of abysmal performance on community supervision, belief that he does not require rehabilitative treatment, continued substance abuse and criminal behavior while this case was pending, and failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions. Given any reasonable view of the facts, Jenkins has failed to establish an abuse of sentencing discretion.

Jenkins next asserts that the district court abused its discretion by relinquishing jurisdiction in light of his claim that the court “all-but required” him to participate in the NICI sex offender treatment program that was recommended by IDOC – despite the fact that Jenkins agreed to participate in that very program – and because, he claims, the court “ultimately relinquished jurisdiction because [he] did not actively participate in treatment.” (Appellant’s brief, pp.6-8.)

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient

information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

At the beginning of his period of retained jurisdiction, Jenkins was placed in the CAPP program. (PSI, p.139.) Before he was sent to the CAPP facility, Jenkins received an incident report for arguing with multiple staff members regarding a sanction and “leering at staff aggressively.” (PSI, p.149.) While at the CAPP facility, Jenkins incurred a total of three incident reports, for failing to show up for orientation, talking during count, and being in an unauthorized area. (PSI, pp.143, 148.) Approximately six weeks into his program, CAPP staff reported:

Jenkins ... has been close[d] minded to curriculum and feedback. He has expressed during Partners In Parenting he would not let his 14 year old daughter wear a mini skirt, [“I would make her change!”] When asked why he would react so harshly to the situation he said, [“Well these girls walk around these days just asking for it”,] turned towards peers and said, [“you know what I mean!”] and laughed. Instructor tried to redirect thinking and he became irritated, using victim stance [“you[’re] just picking on me!”] [He] closed off by folding arms across chest, arguing, and looking down with no eye contact. This behavior has continued for most of the week. Mr. Jenkins informed instructor he feels picked on and [“I just won[’]t talk in class!”] He refuses to participate in class discussions and works on homework assignments during class; he was asked to stop, he slammed his note book shut, sat back in seat, and crossed arms across chest.

(PSI, pp.146-47.) Several weeks later, toward the end of Jenkins’ CAPP programming, CAPP staff noted:

Mr. Jenkins continues to be close[d] minded and defensive with feedback. He constantly asks to lead class discussions and when denied will become aggressive, repeatedly opening and slamming binder shut and tossing his pencil on table. He is having a hard time following simple classroom rules and has be[en] repeatedly asked to keep his binder closed during presentations; he becomes angry by slamming binder closed and throwing his body back in his chair crossing arms across



chest. He was told this is the last verbal warning next disobedience to orders will result in written warning.

(PSI, p.145.) CAPP staff ultimately concluded:

Although [Jenkins] has showed progress with communication skills, he continues to struggle with faulty criminal thinking, not taking full responsibility for his actions by making light of the situation or joking, being close[d] minded to feedback and some curriculum, becoming angry, and constantly wanting to control classroom activities and conversations.

PSI, p.143.) The district court concluded that Jenkins' performance in the CAPP program was "abysmal," and continued the rider review hearing "to give the defendant and his attorney an opportunity to subpoena someone from the Department of Correction for the hearing to explain IDOC's recommendation for probation." (R., p.66.) A Deputy Chief at IDOC's Prisons Division subsequently reviewed Jenkins' case and determined that an error had occurred at RDU and that Jenkins should have been placed in the sex offender treatment rider, and requested that the court allow Jenkins to participate in the sex offender rider program as he had never before participated in sex offender treatment. (R., p.65.) Jenkins then informed the district court that "he would gladly participate in the Sex Offender Treatment Program" as recommended. (R., p.64.) The district court granted the request and vacated the rider review hearing to allow Jenkins to participate in the sex offender treatment program at NICI before his period of retained jurisdiction expired. (R., p.67; PSI, pp.152-53.)

Jenkins performed extremely poorly at NICI. He failed to complete his assigned programming and incurred at least 12 informal disciplinary sanctions and three DOR's. (PSI, pp.153-55, 160-66.) NICI advised, "Many times staff reported that it felt like [Jenkins] was trying to intimidate them [b]y raising his voice and stepping closer to them. He used profanity and name calling when a staff member would not back down.

He frequently shared his opinion that this program was stupid, inconsistent, a joke, and he should not be at NICI since he had served out his time on his sex offense.” (PSI, pp.155-56.) Program staff ultimately concluded, “This antagonistic attitude toward authority that Mr. Jenkins has displayed while at NICI is not predictive of doing well on probation. At this time, he could not be considered a good candidate for probation.” (PSI, p.156.) NICI recommended that the district court relinquish jurisdiction, stating:

Mr. Jenkins could not be considered a viable candidate for probation at this time. He has been antagonistic toward following rules and wanted to argue every disciplinary action he received. He spent most of his energy in his CBI-SO group trying to convince the facilitator and his peers that he did not need this group since he had gone 10 years crime free. He was not truthful in that he left out a great deal of information, such as the amount of time in 10 years that he was incarcerated and that he had never completed treatment. Rather than address his sex offending risks, he tried to address his substance abuse issues or petty problems in the unit. He has an overwhelming need to be right and to be perceived as smarter than others. This interferes with his ability to listen to feedback and accepting any view other than his own. He would be very difficult to supervise on probation if this attitude continues.

(PSI, p.158.)

At the jurisdictional review hearing, the state argued:

It’s clear Mr. Jenkins is not a candidate for probation at this time, that he did quite poorly on this period of retained jurisdiction, possibly even worse than he did on the first period of retained jurisdiction.

And so I don’t see any improvement. I don’t see any reason to think that Mr. Jenkins would do well on probation. And so we would ask you to relinquish jurisdiction.

(8/19/16 Tr., p.16, Ls.1-10.) The district court agreed, stating, “Your performance does not merit being placed on probation. And, therefore, I am going to relinquish jurisdiction.” (8/19/16 Tr., p.20, Ls.5-7.) Jenkins is not a viable candidate for community supervision, particularly in light of his abysmal

performance in the retained jurisdiction program, continued criminal thinking and disregard for institutional rules, failure to demonstrate any rehabilitative progress and lack of amenability to rehabilitative programming, and the risk he poses to the community. Jenkins has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

### Conclusion

The state respectfully requests this Court to affirm Jenkins' conviction and sentence and the district court's order relinquishing jurisdiction.

DATED this 13th day of April, 2017.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of April, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General